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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,177	07/31/2003	Steve Bissel	3560.1000-000	1423

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EXAMINER

WALCZAK, DAVID J

ART UNIT PAPER NUMBER

3751

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/631,177

Applicant(s)

BISSEL, STEVE

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-6 and 8-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The newly recited limitation "non-removably" is considered to be new matter. The Applicant indicates that various passages in the specification and Figure 1 and 3 support this limitation, however, nothing in the specification (including the passages cited by the Applicant) or drawings indicates that the dispensing member (which consists of the rod 20 and dial 8) is non-removably mounted in the housing. The cited passage on page 3, lines 12-18 disclose the general construction of the device (which is said to be well-known) and materials used to make the device, but does not indicate that the dispensing member is non-removably mounted. Further, well-known dispensing devices similar to the Applicant's device include removable dispensing mechanisms (see, for example, the Schroeder reference cited in the previous Office Action). The cited passage on page 5, lines 3-5 does disclose that the rod is "fixedly" mounted to the dial but does not disclose that the dispensing mechanism (which has been defined by the Applicant as consisting of the rod and dial) is non-removably mounted. The cited passage on page 5, lines 14-25 disclose that the device can be disposable or be a multi-use, refillable device but does

not disclose that the dispensing mechanism is non-removable. Further, as the specification indicates that the device can be refilled (page 5, line 25), it would appear that the dispensing mechanism is removable in order to enable a user to refill the device, i.e., the specification has not disclosed any other way to refill the device and, viewing the drawings, it appears that the only way that the device can be refilled is to remove the dispensing mechanism. In regard to the drawings, there is no evidence therein that the dispensing mechanism is non-removable. Quite the contrary, viewing Figure 3, it appears that the dispensing mechanism is "removable" in that housing 10 appears to be integrally formed with a top and bottom wall such that the only way the dispensing mechanism can be assembled into the housing is by inserting the mechanism through the opening in the bottom wall. As it appears that the dispensing mechanism can be inserted through the opening in the bottom wall, it follows that the mechanism can be removed through the bottom wall.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 8, 10, 14 and 15 remain rejected under 35 U.S.C. 102(b) as being anticipated by Schroeder. In regard to claims 1, 4, 5, 8, 10 and 14, Schroeder discloses a container for dispensing butter comprised of a housing 10 having an open top, a

bottom end and a sidewall, a platform 50, a dispensing mechanism 30 "non-removably" mounted in the housing and comprised of a threaded rod 40 upon which the platform is movably mounted and a rotary dial 38 for turning the rod and thereby moving the platform (In as much as the Applicant has defined the term "non-removably", the dispensing mechanism in the Schroeder device is considered to be "non-removably" mounted, i.e., in the absence of any outside force, the dispensing mechanism will remain in the housing via frictional engagement and cannot be removed. Therefore, the dispensing mechanism can reasonably be considered "non-removably" mounted to the housing.) and a cover 14 wherein the container is filled with butter prior to use, i.e. "pre-loaded". Further, the container is considered to be a "one-time use" container in that it is capable of being disposed of after only one use. It is noted that the method as claimed is inherent in a one-time operation of the Schroeder device. In regard to claims 6 and 15, the shape of the platform (substantially square) resembles the shape of the open top of the housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Volpini. Although the open top of the housing in the

Schroeder device is not of a concave shape, attention is directed to the Volpini reference, which discloses another butter dispenser wherein the open top 12 is of a concave shape in order to enable the device to more effectively apply butter to a cylindrical food product (such as a corn cob, see column 3, lines 4-7). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such an open concave surface onto the Schroeder device in order to enable that buttering device to more effectively apply butter to a cylindrical food product.

Claims 3, 9, 12 and 13 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Merkle. Although the open top of the housing in the Schroeder device is not of a convex shape and is not slotted, attention is directed to the Merkle reference, which discloses another butter dispenser (column 1, line 12) which includes a slotted open top 27 which is of convex shape in order to better apply the butter to a concave surface (see column 3, lines 39-44). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a slotted convex surface onto the Schroeder device in order to enable that buttering device to more effectively apply butter to a concave surface.

Conclusion

This is an RCE of applicant's earlier application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first

action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
2/1/05